

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CHRISTOPHER DAVIDSON et al.,)	
)	
Plaintiffs,)	
)	Civil Action No. 3:10cv113
vs.)	Judge Wiseman
)	Magistrate Judge Bryant
UNITED BENEFITS OF AMERICA, LLC, et al.,)	
)	JURY DEMAND
Defendants.)	

PROPOSED INITIAL CASE MANAGEMENT ORDER

In accordance with Local Rule 16.01(d)(2), the parties jointly submit this Proposed Initial Case Management Order for the initial case management conference scheduled for March 29, 2010.

1. **Service of Process:** Service of Process on all Defendants is complete.
2. **Responsive Pleadings:** Defendants have filed Answers to the Complaint.
3. **Jurisdiction:** The Court has jurisdiction of this case pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §1331. Venue is proper in this Court.
4. **Mandatory Initial Disclosures:** Pursuant to Fed. R. Civ. P. 26(a)(1), all parties must make their initial disclosures no later than 14 days after the case management conference.
5. **Discovery:**
 - a. Discovery is not stayed during dispositive motions, unless ordered by the Court.
 - b. The parties shall declare to opposing parties the identity of their expert witnesses and provide the information specified in Rule 26(a)(2)(B) by

September 3, 2010. Any supplements to expert reports shall be provided by October 1, 2010.

- c. All discovery, including depositions of experts, shall be completed no later than December 17, 2010. Any written discovery shall be served in time so that responses are due no later than December 17, 2010.
- d. Dispositive Motions: Briefs shall not exceed 25 pages. Dispositive motions will be filed no later than January 21, 2011. Responses to dispositive motions shall be due 30 days after the filing of the dispositive motion. Optional replies shall be due 15 days after the filing of the response.

Prior to filing any discovery-related motion, the parties will schedule and conduct a telephone conference with the Magistrate Judge.

6. **Amendments to Pleadings:** The deadline for filing Motions to Amend the pleadings is July 2, 2010.

7. **Parties' Theory of the Case:**

a. **Plaintiffs' Theory of the Case:** Plaintiffs contend that they were hourly, non-exempt employees whose rights under the FLSA were violated by Defendants' knowing decisions to misclassify them, fail to record all hours worked, fail to pay for all hours worked or overtime premiums as required under the Act, and also improperly charged Plaintiffs for employer's share of payroll taxes. Plaintiffs contend this conduct was willful and in bad faith. Plaintiffs also contend that Defendants' conduct constitutes a breach of contract as it violates the terms and conditions of employment agreed to by the parties and a violations of Tennessee wage laws. As a result, Plaintiffs are entitled to recover their lost wages and overtime premiums, liquidated damages, attorneys' fees and costs, pre and post judgment interest and any other relief

they are entitled to under the law.

b. Defendants' Theory of the Case

Defendants deny that Plaintiffs are entitled to any of the relief requested under the FLSA and Tennessee wage statutes or for breach of contract. Defendants deny that Plaintiffs were knowingly misclassified or that any such action to recover payroll taxes may be maintained under the FLSA or Tennessee law. Further, the Complaint does not accurately describe Plaintiffs' work schedule or any of UBA's pay structure, nor does it accurately describe UBA's deductions, and Defendants deny that Plaintiffs are entitled to the wages alleged. Moreover, to the extent that Plaintiffs intend to maintain this action as a collective action, such action is not appropriate because Plaintiffs are not similarly situated to each other, or to other individuals in the group or class they purport to represent, and certification of a collective action would not serve judicial economy and would waste the resources of this Court.

8. **Trial Date:** Jury trial is set to begin on June 21, 2011, at 10:00 a.m. before Senior Judge Wiseman. A pretrial conference shall be held on June 10, 2011, at 10:00 a.m. Judge Wiseman will issue a separate order setting forth his requirements for both the trial and pretrial conference. Trial is expected to take three days.

9. **Issues Resolved:** None.

10. **Issues in Dispute:** All substantive issues remain in dispute and include the following:

- a. Whether Defendants misclassified Plaintiffs;
- b. Whether Defendants owe back wages, overtime premiums and payroll taxes to Plaintiffs and in what amount;
- c. Whether Defendants violated Tennessee wage laws;
- d. Whether Defendants breached their contracts with Plaintiffs;
- e. Whether Defendants failed to act in good faith and/or willfully;

f. The amount of damages Plaintiffs are entitled to recover.

11. **Other Claims:** None are known at this time.

12. **Follow-up Case Management Conference:** A follow-up case management conference is scheduled for November 2, 2010, at 9:30 a.m. Counsel for plaintiff shall initiate this call.

13. **Settlement:** The parties have not yet engaged in settlement discussions; the parties believe that an early judicial settlement conference would be beneficial.

It is so ORDERED.

s/ John S. Bryant

U.S. Magistrate Judge

Respectfully submitted,

s/ Cynthia J. Cutler

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